dismal failures, and the fact that international economic conditions in the modern world promote competition and rivalry rather than peace. The competition for the control or monopolization of raw materials, such as oil, or of particular trade-routes and markets, exercises far greater influence on international relations than do particular forms of government. The *causes* of war, as several contributors point out, are hardly studied or affected by the Covenant and are left to operate in all their virility. Having fermented to the point of belligerency, the League then proposes to effect a peaceable settlement. The method having consistently failed heretofore in the larger political issues, we shall await with interest the discovery and production of those new factors which are now to make it a success. The difficulty in the solution of the problem seems to lie in the fact that the struggles for power and for peace cannot long run consistently parallel. For us Americans this Covenant has a special significance. The problem it raises may be reduced to a simple yet vital issue, and is nothing less than this: Shall we resume our independence or shall we intrust the conduct of our foreign affairs to another Power?

The book is remarkably free from those emotional invocations which in the popular discussion of the league of nations have consumed so much intellectual energy. The chapter on the development of the American policy of diplomatic isolation is noteworthy. The chapter on "labor" bears little relevancy to the subject of the book. The more recent social and industrial movements in Europe and elsewhere are not discussed at all. The Covenant itself is considered only incidentally in its bearing on the various topics discussed; many of its most intricate, obscure, or nebulous provisions, which have received critical analysis in recent months, are not considered. The relation of the Covenant to the Treaty, as already observed, is hardly mentioned. For these reasons the title of the book may seem rather misleading, although that hardly detracts from the importance of the work. Appendices reprinting past proposals for a league of nations, beginning with that of the Abbé Saint-Pierre (1713) and bibliographical notes to the various chapters, add measurably to the value of a book which must be considered a serious contribution to the literature of the subject.

EDWIN M. BORCHARD.

JUDICIAL CONTROL OVER LEGISLATURES AS TO CONSTITUTIONAL QUESTIONS. By Jackson H. Ralston. Washington: Law Reporter Printing Company. 1919. pp. 80.

It is important to notice how this pamphlet happened to be written.

The American Federation of Labor, at an annual convention held in 1918, passed the following resolution:

"Whereas, The sole right to make or unmake laws is vested in legislative bodies or the direct vote of the people by the Constitution of the United States; and

"Whereas, The preservation of this right is essential if we are to remain a self-governing people; and

"Whereas, Courts of the United States without constitutional authority or legislative sanction have assumed the power to invade the prerogatives of the legislative branch by unmaking and rendering invalid laws enacted by the people or their legislative representatives, the exercise of this power setting aside on many occasions the desires and aspirations of the people as expressed through legislation, even when such measures had the approval of the majority of the people, their legislative representatives, and the President of the United States, an action which would be impossible in any other democratically governed nation; therefore, be it

"Resolved, That the Executive Council be and is hereby instructed to have a study made of the successive steps which have been taken by our Federal and Supreme Courts, through which, without constitutional authority, and in opposition to the action of the Constitutional Convention, they laid hold on power which they now exercise; that the results of such study be prepared in pamphlet form and distributed to the affiliated organizations and given such other form of publicity as may be deemed advisable; and that legal counsel be consulted with, so that an adequate measure may be prepared and introduced to Congress, which will prevent any invasion of the rights and prerogatives of the legislative branch of our government by the judiciary."

The American Federation of Labor is understood to have millions of members; and in such a large number there must be many who will wonder in what words of the Constitution of the United States the author of that resolution found a provision for the making or unmaking of laws by a "direct vote of the people." However, after the convention adopted the resolution, preambles and all, the Executive Council, even though some of its members may have doubted the opinions of the draftsman as regards constitutional matters, had no choice. Thus it has happened that a lawyer was employed to prepare a pamphlet which, if one paraphrases the resolution in such way as to visualize its real meaning, is intended to show that when the framers and ratifiers of the Constitution said "All legislative Powers herein granted shall be vested in a Congress," they meant to add "and so shall be all other legislative Powers," and to show also that when the framers and ratifiers of the Constitution said "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding," they meant to add "and the Laws of the United States which shall be made in conflict with the Constitution of the United States shall also be the supreme Law of the Land, any Thing in the Constitution of the United States to the Contrary notwithstanding;" and that when the framers and ratifiers of the Constitution of the United States said "No Bill of Attainder or ex post facto Law shall be passed," and laid on Congress other limitations too numerous to quote in this place, and also when the Amendments said "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," and "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," and "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury," and "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people," it was meant to add, in each instance, and in all other instances of limitations upon congressional power, words to the following effect: "but nevertheless all acts of Congress in conflict with this limitation of congressional power shall be deemed valid by the courts" — and all this notwithstanding the constitutional provision that "The Senators and Representatives above mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."

To prepare a pamphlet in compliance with those instructions would seem to be a laborious undertaking; but the pamphlet was prepared, and here it is.

Though it is necessarily classed as an argument rather than as an example of scientific investigation, it is well worth examination, for it is made with moderation and fairness and is accompanied with useful lists of instances in which federal or state statutes and municipal ordinances have been disregarded by the Supreme Court of the United States. There are adequate extracts from many of the writers who are habitually quoted against the judicial refusal to enforce as between litigants legislative acts conflicting with the limitations placed upon legislative power by the Constitution; and the possessor of this pamphlet is probably relieved from the need of examining those earlier writers. The pamphlet itself is distinctly more moderate in tone than the quotations. Its fairness is indicated by the care with which the author points out (pp. 47–49) that what was said by Gibson, J., in *Eakin* v. *Raub*, 12 S. & R. 330, 344 (1825), was a dissent and was eventually repudiated by Gibson himself, and also by the admission (pp. 36–38) that the Supreme Court of the United States is guilty of no usurpation when it disregards invalid legislation of states, and finally by the recognition that for the supposed impropriety of disregarding invalid legislation by Congress a remedy cannot be found in judicial recall or in recall of judicial decisions or in an act of Congress forbidding judges to treat legislation as unconstitutional (pp. 58–61). Yet notwithstanding its fairness of tone the pamphlet loyally does its best to uphold the views expressed in the resolution to which it owes its origin. Thus it happens that here can be found in small compass a useful exposition of that side. If any one cares to have what may be termed a non-partisan presentation of the history and reason and limits of the judicial function as regards unconstitutionality, there is no better course, even at this late day, than to study carefully Prof. James Bradley Thayer's "The Origin and Scope of the American Doctrine of Constitutional Law," which appeared in 1893 and is accessible both in 7 HARVARD LAW REVIEW, 129, and in "Thayer's Legal Essays," 1. E. W.

SELECT CASES BEFORE THE KING'S COUNCIL, 1243–1482. Edited for the Selden Society by I. S. Leadam and J. F. Baldwin. Cambridge: Harvard University Press. 1918. pp. cxvii, 156.

Volume 36 of the Selden Society's publications, for the year 1918, is printed and published in America by the Harvard University Press. The work was begun by Mr. Leadam and carried part way before his lamented death in 1913; and it was completed by Professor Baldwin of Vassar, whose treatise on the King's Council made him an excellent substitute for the difficult work.

There is an Introduction in which the nature, jurisdiction, and procedure of the King's Council is discussed in a scholarly manner. The development of the Court of Chancery from the Council is traced, and the gradual development of the Chancellor's power, from the president of a branch of the Council to the sole judge of the flourishing court, is made clear and convincing. The introduction will be a help to all students of the history of English equity.

More than half of the introduction is concerned with notes, principally historical, on the "Cases" printed later; and the cases themselves are also enlightened by short notes to the text. In fact, the interest in the work is very little legal, very much historical; nor is the history legal history — at least, if the reviewer is right in feeling that the history of legal institutions is not the history of law, though it is its indispensable tool. If we admit that any law is to be learned from administrative tribunals like the early King's Council, we are also obliged to confess that it is not from such fragmentary records as are left here. These tribunals, apart from the regular courts, were unsuccessful experiments in social order and social justice; equity itself was of no account